

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Robert Bryan	Team: Squad #13	CCRB Case #: 201907786	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Sunday, 08/25/2019 11:20 PM	Location of Incident: [REDACTED]	Precinct: 83	18 Mo. SOL 2/25/2021	EO SOL 10/12/2021	
Date/Time CV Reported Mon, 08/26/2019 1:03 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 09/03/2019 11:03 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Alexander Leon	16065	949885	083 PCT
2. POM Dustin Olivos	19950	950978	083 PCT
3. POM Thomas Coleman	29737	953765	083 PCT
4. Officers			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Duane Seaton	24810	962791	083 PCT
2. POM Kurlon Parris	24765	962661	083 PCT
3. POM Timothy Deck	19638	958482	083 PCT
4. POM Christophe Emmart	13299	960496	083 PCT
5. POM Jeffrey Chin	16758	944434	083 PCT
6. POF Ashley Slater	20951	963282	083 PCT
7. POM Thomas Donnelly	04376	960473	083 PCT
8. POM Joel Nunez	25963	965373	083 PCT

Officer(s)	Allegation	Investigator Recommendation
A. Officers	Abuse: Officers entered § 87(2)(b) in Brooklyn.	[REDACTED]
B.POM Thomas Coleman	Discourtesy: Police Officer Thomas Coleman spoke discourteously to § 87(2)(b)	[REDACTED]
C. Officers	Force: Officers used physical force against § 87(2)(b)	[REDACTED]
D.POM Dustin Olivos	Force: Police Officer Dustin Olivos used physical force against § 87(2)(b)	[REDACTED]
E.POM Alexander Leon	Force: Police Officer Alexander Leon used a chokehold against § 87(2)(b)	[REDACTED]
F.POM Alexander Leon	Force: Police Officer Alexander Leon restricted § 87(2)(b)'s breathing.	[REDACTED]
G.POM Thomas Coleman	Discourtesy: Police Officer Thomas Coleman spoke discourteously to § 87(2)(b)	[REDACTED]
H.POM Dustin Olivos	Force: Police Officer Dustin Olivos used a taser against § 87(2)(b) § 87(2)(b)	[REDACTED]
I.POM Dustin Olivos	Force: Police Officer Dustin Olivos used a taser against § 87(2)(b)	[REDACTED]

Officer(s)	Allegation	Investigator Recommendation
J.POM Dustin Olivos	Force: Police Officer Dustin Olivos used a Taser on § 87(2)(b) [REDACTED]	[REDACTED]
K.POM Thomas Coleman	Force: Police Officer Thomas Coleman used a Taser on § 87(2)(b) § 87(2)(b) [REDACTED]	[REDACTED]
L.POM Thomas Coleman	Force: Police Officer Thomas Coleman used a Taser on § 87(2)(b) [REDACTED]	[REDACTED]
M.POM Thomas Coleman	Force: Police Officer Thomas Coleman used a Taser on § 87(2)(b) [REDACTED]	[REDACTED]
N.POM Thomas Coleman	Force: Police Officer Thomas Coleman used a Taser on § 87(2)(b) [REDACTED]	[REDACTED]

Case Summary

On August 26, 2019, Sgt. Kevin Mahones of the 83 Precinct called IAB to report that force was used against § 87(2)(b) while he was being taken into police custody. The IAB log was received at the CCRB on September 3, 2019.

On August 25, 2019, at approximately 11:20 p.m., Police Officer Thomas Coleman, Police Officer Dustin Olivos, Police Officer Duane Seaton, Police Officer Kurlon Parris, Police Officer Alexander Leon, Police Officers Timothy Deck, Police Officers Christopher Emmart, and Police Officer Thomas Donnelly, all of the 83rd Precinct, arrived at § 87(2)(b) in Brooklyn, in response to a 911 caller reporting that a man was assaulting a woman inside. Officers entered the apartment, where § 87(2)(b) was inside with his girlfriend, § 87(2)(b) (**Allegation A – Abuse of Authority – Entry;** § 87(2)(g) PO Coleman asked § 87(2)(b) “Are you out of your fucking mind?” (**Allegation B – Discourtesy – Word;** § 87(2)(g) Officers used physical force against § 87(2)(b) (**Allegation C – Force – Physical Force;** § 87(2)(g) PO Olivos used physical force against § 87(2)(b) (**Allegation D – Force – Physical Force;** § 87(2)(g) PO Leon placed § 87(2)(b) in a chokehold (**Allegation E – Force – Chokehold;** § 87(2)(g) and restricted his breathing (**Allegation F – Force – Restricted Breathing;** § 87(2)(g) PO Coleman told § 87(2)(b) “My man, you’re about to get fucking tased” (**Allegation G – Discourtesy – Word;** § 87(2)(g) PO Olivos tased § 87(2)(b) three times (**Allegation H – Force – Nonlethal restraining device;** § 87(2)(g) **Allegation I-J – Force – Nonlethal restraining device;** § 87(2)(g) PO Coleman tased § 87(2)(b) four times (**Allegation K – Force – Nonlethal restraining device;** § 87(2)(g) **Allegations L-N – Force – Nonlethal restraining device;** § 87(2)(g) Police Officer Jeffrey Chin, Police Officer Ashley Slater, and Police Officer Joel § 87(2)(b) all of the 83rd Precinct, arrived while the other officers were restraining § 87(2)(b) was arrested and charged with assault, resisting arrest, and obstructing governmental administration.

§ 87(2)(b)

The investigation obtained BWC footage from PO Coleman, PO Seaton, PO Parris, PO Leon, PO Emmart, PO Deck, PO Olivos, PO Donnelly, PO Chin, PO § 87(2)(b) and PO Slater. The BWC footage is attached to IAs 59-73 (**Board Review 01-15**) and summarized in IAs 122 and 127-130 (**Board Review 16-20**).

Findings and Recommendations

Allegation (A) Abuse of Authority: Officers entered § 87(2)(b) in Brooklyn. The 911 call audio revealed that an anonymous female caller said she lived at § 87(2)(b) and that her neighbors in Apt. § 87(2)(b) were fighting. She said she called the police on previous occasions to report their fights, but that this time she thought the man was beating the woman up. The caller said she could hear the woman crying and things breaking, though she did not know if anyone was hurt. She said her neighbors had two children, a § 87(2)(b)-year-old and a § 87(2)(b)-year-old. (**Board Review 21**).

The ICAD document for the Event related to this incident confirms that it was relayed to the officers that an anonymous female caller said someone was being assaulted at § 87(2)(b)s and § 87(2)(b)s apartment and that children were present. The female caller asked to remain anonymous and to not speak with the responding officers. Fourteen minutes elapsed between the 911 call and the officers requesting an ambulance for § 87(2)(b) (**Board Review 44**).

In PO Coleman’s BWC video (**Board Review 01**), at the 00:28 minute-mark of the media player timestamp (visible at the bottom of the screen), PO Seaton opens § 87(2)(b) and § 87(2)(b)s unlocked apartment front door. The officers are not captured knocking. There is no audio for the first 30 seconds of

the video, during which PO Coleman and PO Seaton stand outside the door and § 87(2)(b) is seen pacing in a room at the end of the kitchen talking to someone offscreen. At 00:30, the sound comes on and § 87(2)(b) says, "I don't care. I don't care about none of that at the end of the day." § 87(2)(b) says something inaudible off camera and § 87(2)(b) replies, "So what? They can call police all they want to. I'm leaving. Tell them the truth, though." § 87(2)(b) appears to the right from behind a wall and PO Seaton, who is still holding the door open, says to her, "Come here," but she does not do so. No injuries are visible on § 87(2)(b) though the video quality is poor due to distance and a bright light shining from the ceiling. § 87(2)(b) tells § 87(2)(b) "You're making a big scene." § 87(2)(b) says, "I don't care. Let me get my shit first." § 87(2)(b) says, "Get your stuff." They continue to argue, and § 87(2)(b) says, "I've been telling you to leave." § 87(2)(b) says the officers cannot do anything to him because he lives there. Though not audible in PO Coleman's BWC video, in PO Seaton's BWC video (**Board Review 02**), at the 01:12 minute-mark of the media player timestamp (visible at the bottom of the screen), § 87(2)(b) says, "I don't care. They can't lock me up. They can't do nothing." § 87(2)(b) says, "You have to leave. That's it. I'm telling you to leave." § 87(2)(b) says he has mail addressed to him there, so § 87(2)(b) cannot tell him to leave.

At 01:40 in PO Coleman's BWC video, PO Coleman enters the apartment, approaches § 87(2)(b) and says, "You got to leave. I don't care." The BWC footage from PO Seaton (**Board Review 02**), PO Parris (**Board Review 03**), PO Leon (**Board Review 04**), PO Emmart (**Board Review 05**), PO Deck (**Board Review 06**), and PO Donnelly (**Board Review 08**) show that they all immediately follow PO Coleman into the apartment. § 87(2)(b) insists that § 87(2)(b) leave, and § 87(2)(b) demands that she let him collect his belongings. In PO Coleman's BWC video (**Board Review 01**), at 03:00, PO Coleman asks § 87(2)(b) "What's going on?" PO Seaton says, "You okay? Do you need an ambulance? I see your nose." He shines a flashlight in her face and asks, "What happened to your face? How did your nose get like that? What happened?" § 87(2)(b) who has a bloody nose, begins to cry and says, "I just wanted him to leave. Everything is a fucking argument. That's it. This shit is embarrassing. Somebody else must have called you because I didn't call you."

§ 87(2)(b), § 87(2)(g) He said he and § 87(2)(b) were engaged in a verbal argument that did not turn physical, and that § 87(2)(b) asked him to leave, so he started to walk out of the apartment. On his way out, he noticed that the door was open about six inches (he did not say whether it had been closed before) and he saw approximately seven officers standing outside through the gap in the door. Neither § 87(2)(b) nor § 87(2)(b) had called 911. The officers entered the apartment without warning and did not ask for permission to do so. § 87(2)(b) did not mention anything about § 87(2)(b) having any visible injuries during his CCRB interview, but he denied that any violence had taken place (**Board Review 22**).

§ 87(2)(b), § 87(2)(g) She said she and § 87(2)(b) were home alone, loudly arguing because she did not want him to go out. The fight never turned physical. At one point, § 87(2)(b) was yelling at § 87(2)(b) in the hallway. She told § 87(2)(b) to get his stuff and leave, so he went inside to get his things. Someone, whom she believed to be her downstairs neighbor, called 911. About six officers arrived, opened her door, which was unlocked, and walked inside the apartment. No officer asked for permission to enter. While arguing with § 87(2)(b) § 87(2)(b) accidentally banged her nose on a door, which caused her nose to bleed. The officers asked if she wanted to press charges against § 87(2)(b) for domestic violence. § 87(2)(b) told them she had not called 911, that no domestic violence had occurred, and that if it had, she would have called herself (**Board Review 23**).

PO Coleman stated that he and PO Leon arrived at about the same time as PO Parris and PO Seaton. A third-party caller thought she heard someone being assaulted inside § 87(2)(b)'s and § 87(2)(b)'s apartment, though none of the officers spoke directly to the 911 caller. PO Coleman stood outside the

door of the apartment, which was ajar, listening to § 87(2)(b) and § 87(2)(b) inside. PO Seaton opened the door, and, while standing outside the front door, PO Coleman saw § 87(2)(b) inside the apartment, approximately 10 feet away, arguing with § 87(2)(b) who had red marks and swelling on her face which PO Coleman was able to see while standing outside the open door in the hallway. Suspecting that § 87(2)(b) had hit § 87(2)(b) PO Coleman entered the apartment to protect her safety (**Board Review 24**).

§ 87(2)(g)

PO Leon stated that while he was standing in the hallway outside the apartment, he noticed § 87(2)(b)'s nose was bleeding, leading him to believe that a domestic assault had occurred. PO Seaton stated that § 87(2)(b) seemed “disheveled,” and was telling § 87(2)(b) that she wanted him to leave, while § 87(2)(b) was “screaming and carrying on,” saying he did not care that officers were there. PO Parris stated that he saw § 87(2)(b) was bleeding, he did not recall from where, after he entered the apartment, and he asked her if she needed medical assistance.

According to the emergency doctrine, entry into a home is permissible without a warrant if law enforcement officers reasonably believe that emergency assistance is needed. People v Rodriguez, 77 A.D.3d 280 (2010) (**Board Review 30**).

§ 87(2)(b), § 87(2)(g)

Allegation (B) Discourtesy: Police Officer Thomas Coleman spoke discourteously to § 87(2)(b)

In PO Seaton’s BWC footage (**Board Review 02**), at the 01:35 minute-mark of the media player timestamp (visible at the bottom of the screen), PO Coleman tells § 87(2)(b) “You got to leave. I don’t care. You got to leave.” At 01:39, PO Coleman places his left hand on § 87(2)(b)’s right shoulder. § 87(2)(b) swings his elbow to shake off PO Coleman’s hand and says, “Don’t touch me,” to which PO Coleman replies, “Are you out of your fucking mind?” Neither § 87(2)(b) nor § 87(2)(b) mentioned PO Coleman’s use of profanity.

Upon reviewing his BWC footage, PO Coleman said that in response to him trying to “grab § 87(2)(b) out of the apartment,” § 87(2)(b) pulled away violently. PO Coleman responded by saying, “Are you out of your fucking mind” because it appeared to him that § 87(2)(b) was “coming at” PO Coleman as if to fight him.

NYPD’s disciplinary decisions “have consistently held that when a police officer uses an otherwise impolite word during a stressful street encounter where that officer is attempting to maintain control of the situation, the officer’s verbal slip does not rise to the level of actionable misconduct.” NYPD Disciplinary Case No. 2018-18951 (**Board Review 31**).

§ 87(2)(b), § 87(2)(g)

Allegation (C) Force: Officers used physical force against § 87(2)(b)

Allegation (D) Force: Police Officer Dustin Olivos used physical force against § 87(2)(b)

Allegation (E) Police Officer Alexander Leon used a chokehold against § 87(2)(b)

Allegation (F) Force: Police Officer Alexander Leon restricted § 87(2)(b)'s breathing.

In PO Olivos' BWC footage, at the 00:33 minute-mark of the media player timestamp (visible at the bottom of the screen), § 87(2)(b) exits the apartment, walks past PO Olivos, who is standing just outside the front door, and starts walking downstairs from the third floor while yelling at § 87(2)(b). At 01:40, while standing on the landing, § 87(2)(b) yells at § 87(2)(b) that he pays for everything and that she is behind on rent. At 01:53, § 87(2)(b) walks back upstairs and up to PO Olivos, who is still standing outside the front door. He becomes more animated, waving his hands in the air, and yells at § 87(2)(b) about having other people in the house around their children. § 87(2)(b) tries to walk past PO Olivos, who reaches out his right hand and places it on § 87(2)(b)'s chest. § 87(2)(b) says, "Don't touch me. I'm not...please don't touch me." § 87(2)(b) pushes PO Olivos' hand away from and off of his chest. PO Olivos says, "Stay out of the apartment." § 87(2)(b) says, "I don't give a..." and starts walking towards PO Olivos, who pushes § 87(2)(b) with both hands. § 87(2)(b) says, "Don't touch me, man!" Beginning at 02:06, PO Olivos and the other officers wrestle § 87(2)(b) to the ground. PO Olivos' camera appears to fall to the ground, and it is not clear from this footage or that of the other officers which physical actions are taken to restrain § 87(2)(b) once he lands on the floor, or by whom (**Board Review 07**).

In PO Seaton's BWC video (**Board Review 02**), at the 04:55 minute-mark of the media player timestamp (visible at the bottom of the screen), PO Parris, PO Leon, PO Emmart, PO Donnelly, and PO Olivos crouch over § 87(2)(b) who is on the floor, and attempt to handcuff him. § 87(2)(b) says, "You're choking me." PO Leon, identified via investigation, says, "I'm not choking you. You're trying to bite me." Neither this BWC footage nor that of the other officers shows if any of them make contact with § 87(2)(b)'s neck, but the cameras are too shaky, too close to § 87(2)(b) and too obscured by the bodies of officers to determine which officer is touching § 87(2)(b) where and with which parts of their bodies.

§ 87(2)(b), § 87(2)(g) Several officers (he could not recall which ones or how many) brought him to the floor. He landed face-down. The officers attempted to pull his arms behind his back. § 87(2)(b) resisted for approximately one to two minutes by keeping his arms close to his body so the officers could not place him in handcuffs. PO Olivos, identified via investigation, kicked § 87(2)(b) in the back of his head two or three times while the officers were trying to handcuff him, causing neck pain. An officer whom § 87(2)(b) could not see but who he assumed was the same officer who kicked him in the head, rested his foot on § 87(2)(b)'s neck. § 87(2)(b) could not see which officer(s) took the above actions, but believed the same officer took both actions because they happened in rapid succession. § 87(2)(b) did not allege that his breathing was restricted during his CCRB interview and was unresponsive to subsequent contact attempts for additional information (see IAs for contact attempts).

§ 87(2)(b), § 87(2)(g) She stated that as § 87(2)(b) tried to reenter the apartment, PO Olivos pushed and grabbed him. § 87(2)(b) said, "Get off of me! I need my wallet." § 87(2)(b) told PO Olivos, "Let him go. This is my house. I never called you guys. Let him in so he can get his wallet and go." Five other officers grabbed § 87(2)(b) "slammed" him onto the floor, and tried to handcuff him. PO Olivos kicked § 87(2)(b) in the head. § 87(2)(b) heard § 87(2)(b) say during the incident that he could not breathe because an officer's knee was on his back, though her view of his neck was obstructed at the time by the bodies of officers.

Following this incident and while in police custody, § 87(2)(b) was seen at § 87(2)(b) Hospital. He arrived approximately one hour after the incident. He complained of a throbbing headache. He had no blurry vision, no weakness, no loss of consciousness, no chest pain, no palpitations, and no shortness of breath. He had neck pain but no limitation of movement. He had a bruise over his left eyebrow, another bruise on his right forehead, and a third bruise on his lower lip (**Board Review 32**). § 87(2)(b) did not mention these bruises during his CCRB interview and was unresponsive to subsequent contact attempts to determine which actions caused them.]

§ 87(2)(g) When § 87(2)(b) returned upstairs, PO Olivos put his hand up and said, “You cannot come in here.” He did not want § 87(2)(b) to enter the apartment because officers were inside trying to figure out what was going on. PO § 87(2)(b) said, “Don’t touch me” and pushed PO Olivos. PO Olivos grabbed § 87(2)(b)’s right arm and pulled him down to the floor while PO Coleman did the same with § 87(2)(b)’s left arm. § 87(2)(b) eventually stopped resisting enough for PO Olivos and other officers (he did not recall which ones) to handcuff him. PO Olivos did not recall exactly how he and the other officer overcame § 87(2)(b)’s resistance, though he denied kicking § 87(2)(b) in any part of his body and denied resting his foot on § 87(2)(b)’s neck. PO Olivos denied seeing any other officer do these things. § 87(2)(b)’s breathing did not appear to be restricted at any point and until he watched BWC footage of the incident during his CCRB interview, PO Olivos did not recall § 87(2)(b) saying anything about having trouble breathing (**Board Review 26**). PO Coleman, PO Parris, PO Seaton, PO Emmart, and PO Leon all denied witnessing PO Olivos kick § 87(2)(b) or rest his feet on § 87(2)(b)’s neck, and they each denied taking either of these actions themselves (**Board Review 20-25**). They all denied that § 87(2)(b)’s breathing appeared to be restricted during this incident.

PO Leon’s testimony was generally consistent with the BWC footage. He identified himself as the officer who, in PO Seaton’s BWC footage, replies to § 87(2)(b)’s statement, “You’re choking me,” with, “I’m not choking you. You’re trying to bite me.” PO Leon said he applied pressure to § 87(2)(b)’s face, by pushing his hand down on the side of § 87(2)(b)’s face so that § 87(2)(b) would not bite him (he did not recall which hand he used or which side of § 87(2)(b)’s face he pressed down on). PO Leon thought § 87(2)(b) might bite him because § 87(2)(b) moved his face close to PO Leon’s legs. PO Leon did not touch § 87(2)(b)’s neck at any point.

NYPD Patrol Guide, Procedure 221-01 states that force may be used when it is reasonable to ensure the safety of an officer or civilian and that the application of force must be reasonable under the circumstances (**Board Review 33**).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation (G) Discourtesy: Police Officer Thomas Coleman spoke discourteously to § 87(2)(b)

In PO Coleman's BWC footage (**Board Review 01**), at the 04:35 minute-mark of the media player timestamp (visible at the bottom of the screen), PO Coleman walks from the kitchen to the front door of the apartment, where officers have just begun to struggle with § 87(2)(b). At 04:58, he holds the door open as PO Olivos and several other officers crouch over § 87(2)(b) and attempt to handcuff him. At 05:25, two officers say, "Stop resisting." PO Coleman, who is still standing in the doorway, states, "My man, you're about to get fucking tased." Neither § 87(2)(b) nor § 87(2)(b) mentioned PO Coleman's use of profanity in their CCRB interviews. However, § 87(2)(b) acknowledged resisting being placed in handcuffs by holding his arms close to his body at the point during the incident when this statement was made.

Upon reviewing his BWC footage during his CCRB interview, PO Coleman said he used profanity because he was trying to gain § 87(2)(b)'s compliance as he and the other officers tried to handcuff him. All officers interviewed consistently stated that at the time, § 87(2)(b) was refusing to allow himself to be handcuffed.

NYPD's disciplinary decisions "have consistently held that when a police officer uses an otherwise impolite word during a stressful street encounter where that officer is attempting to maintain control of the situation, the police officer's verbal slip does not rise to the level of actionable misconduct." NYPD Disciplinary Case No. 2018-18951 (Board Review 31).

§ 87(2)(b), § 87(2)(g)

Allegation (H) Force: Police Officer Dustin Olivos used a taser against § 87(2)(b)

Allegation (I) Force: Police Officer Dustin Olivos used a taser against § 87(2)(b)

Allegation (J) Force: Police Officer Dustin Olivos used a taser against § 87(2)(b)

Allegation (K) Force: Police Officer Thomas Coleman used a taser against § 87(2)(b)

Allegation (L) Force: Police Officer Thomas Coleman used a taser against § 87(2)(b)

Allegation (M) Force: Police Officer Thomas Coleman used a taser against § 87(2)(b)

Allegation (N) Force: Police Officer Thomas Coleman used a taser against § 87(2)(b)

In PO Coleman's BWC footage (**Board Review 01**), at the 05:27 minute-mark of the media player timestamp (visible at the bottom of the screen), PO Coleman removes his Taser from its holster and at 05:35, the sound of a Taser can be heard for about five seconds, although the screen is dark due to PO Coleman's BWC tilting towards the floor, where another unidentifiable officer's legs block a clear view of § 87(2)(b) on the floor. Several officers order § 87(2)(b) to turn around and stop resisting. At 05:45, PO Olivos is seen holding a Taser in his left hand. At 06:04, the sound of a Taser is heard for about five

seconds. At 06:12, the sounds of third, fourth, and fifth Taser cycles are heard for about 15 straight seconds. It is unclear whose Taser(s) the sounds come from because the Tasers cannot be clearly seen in the footage. While this is happening, and as § 87(2)(b) lays on the floor face up, officers yell, "Turn around!" § 87(2)(b) is lying on the floor face up.

§ 87(2)(b), § 87(2)(g) He stated that he was tased on the left side of his chest and on each side of his hips for approximately one to two minutes. He could not identify which officers tased him because he was face down on the ground. § 87(2)(b) resisted by holding his arms close to his body, and when he stopped resisting, the officers stopped tasing him.

§ 87(2)(b), § 87(2)(g) She stated that while § 87(2)(b) was on the ground with one handcuff on, PO Olivos tased him twice. § 87(2)(b) yelled at the officers to let him go. § 87(2)(b) had bruises all over his body as a result of the incident, though § 87(2)(b) did not know how specifically each bruise was obtained.

PO Olivos' testimony was generally consistent with the BWC footage. He stated that § 87(2)(b) resisted being handcuffed by flailing his arms, so he used his Taser to drive stun § 87(2)(b) in the "ribs area" of his side (he did not recall which side). This first cycle had no effect, so PO Olivos immediately used a second cycle to drive stun in the same part of § 87(2)(b)'s body. This cycle did not have any effect either, and § 87(2)(b) continued to resist being handcuffed by flailing his arms and putting his hands under his chest as he laid face down and said, "No, no." He also kicked his legs, and one of the kicks made contact with PO Leon's face. PO Olivos could not recall if he used the Taser before or after § 87(2)(b) kicked PO Leon, but after the second cycle, he reholstered it. He used the drive stun function rather than the prongs of the Taser because of his close proximity to § 87(2)(b). PO Coleman also used his Taser against § 87(2)(b) but PO Olivos did not recall if this happened before or after PO Olivos used his own Taser. PO Coleman first used a drive stun against § 87(2)(b) before using the Taser prongs, one of which entered § 87(2)(b)'s body. It did not appear to PO Olivos that any of the Taser cycles, from either him or PO Coleman, were effective. The officers and § 87(2)(b) continued to struggle, and eventually § 87(2)(b) stopped struggling and the officers were able to handcuff him. PO Olivos did not recall how long it took from § 87(2)(b) being tased to him being handcuffed.

PO Coleman's testimony was generally consistent with the BWC footage. He stated that PO Olivos drive stunned § 87(2)(b) but this did not stop § 87(2)(b) from resisting. PO Coleman ordered § 87(2)(b) to put his hands behind his back and stop resisting, but § 87(2)(b) did not comply, so PO Coleman drive stunned § 87(2)(b) on either his torso or one of his legs. § 87(2)(b) who was positioned on his back at this point, responded by kicking PO Leon, who was crouching in front of § 87(2)(b) in the head. PO Coleman tased § 87(2)(b) a second time, this time with prongs, in his chest. Shortly after, § 87(2)(b) became compliant and the officers were able to handcuff him and place him under arrest. PO Coleman believed he only executed two cycles from his Taser. Reviewing his Taser's X26 Data Taser Sheet did not refresh PO Coleman's recollection of how many times he used the Taser during this incident. However, PO Coleman stated that there was nothing short of tasing § 87(2)(b) that he could have done to gain § 87(2)(b)'s compliance. PO Coleman said his additional uses of his Taser were due to his inability to reach § 87(2)(b) with his hands to restrain him, and the fact that § 87(2)(b) was swinging and kicking his arms and legs. While watching his BWC footage, PO Coleman said the sound of four Taser cycles beginning at 06:04 came from his Taser.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g) PO Leon confirmed that § 87(2)(b) kicked him in the head while PO Leon tried to handcuff him.

The X26 Data Taser Sheet for PO Olivos' Taser (**Board Review 33**) shows that PO Olivos pulled the trigger for two seconds at 11:24:31, for five seconds at 11:24:57, and for five seconds at 11:25:06. The X26 Data Taser Sheet for PO Coleman's Taser (**Board Review 34**) shows that he pulled the trigger for four seconds at 11:39:18, for five seconds at 11:39:54, for five seconds at 11:40:01, and for five seconds at 11:40:06. The times listed on the X-26 Data Taser Sheets do not correspond to the embedded time codes in the BWC footage, making it impossible to ascribe the sound of each Taser cycle to a particular officer. The discrepancies in time between the two X26 Data Taser Sheets suggest that due to an unknown technical error, the Tasers' time codes were not just inconsistent with those embedded in the BWC footage, but with each other as well. As such, they are only useful insofar as they show the number of cycles used for each Taser, the length of each cycle, and the time that elapsed between cycles.

§ 87(2)(b)

An AIDED Report was prepared for PO Leon, and notes that § 87(2)(b) kicked PO Leon in the face, causing bruising and substantial pain. PO Leon was removed to § 87(2)(b) Hospital (**Board Review 43**).

NYPD Patrol Guide, Procedure 221-08 states that Tasers should be used against persons who are actively resisting, against persons exhibiting active aggression, or to prevent individuals from physically injuring themselves or other persons present. Active aggression includes a threat or overt act of an assault through physical or verbal means, coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent. Officers must consider the totality of the circumstances, such as the immediacy of the perceived threat or harm to others and whether the subject is actively resisting custody. Officers should use a Taser for one standard cycle (five seconds) while constantly assessing the situation to determine if subsequent cycles are necessary (**Board Review 36**).

§ 87(2)(b), § 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b)
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- PO Coleman has been a member of service for seven years and has been the subject of two allegations in two previous cases, neither of which were substantiated. PO Coleman's CCRB

history does not reflect any apparent pattern pertinent to the investigation.

- PO Olivos has been a member of service for eight years and has been the subject of two allegations in one previous case, which is still open. PO Olivos's CCRB history does not reflect any apparent pattern pertinent to the investigation.
- PO Leon has been a member of service for eight years and has been the subject of one allegation in one previous case, which was not substantiated. PO Leon's CCRB history does not reflect any apparent pattern pertinent to the investigation.

Mediation, Civil and Criminal Histories

- This case was unsuitable for mediation.
- As of December 28, 2020, no Notice of Claim has been filed with the NYC Comptroller's Office regarding this incident (**Board Review 38**).

- § 87(2)(b) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- § 87(2)(b) [REDACTED]
[REDACTED]

Squad 13

Investigator:	<u>Robert Bryan</u> Signature	<u>Inv. Bryan</u> Print Title & Name	<u>07/19/21</u> Date
Squad Leader:	<u>IM Laura Kastner</u> Signature	<u>IM Laura Kastner</u> Print Title & Name	<u>07/19/2021</u> Date